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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,909	09/27/2005	Pino Patella	23383	4604
535	7590	11/08/2007	EXAMINER	
K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900			KELLEHER, WILLIAM J	
ART UNIT		PAPER NUMBER		
3673				
MAIL DATE		DELIVERY MODE		
11/08/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/550,909	PATELLA, PINO
Examiner	Art Unit	
Bill Kelleher	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 August 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-12 are rejected under 35 U.S.C. 112, first and second paragraph, as failing to comply with the enablement requirement and being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "quadrilateral linkages." The specification has been amended to strike "quadrilateral" and add "linkage" in what appears a replacement of "quadrilateral" with "linkage." Applicant's remarks, 4<sup>th</sup> paragraph, also appear to indicate Applicant has replaced "quadrilateral" with "linkage." For the reasons stated in the previous Office Action, it is unclear to the Examiner how the term quadrilateral is being used to describe the linkages claimed. For example, the specification now discloses a linkage 16. The specification no longer refers to this linkage being quadrilateral. The drawings do not provide any clarity as to how linkage 16 is a quadrilateral. Therefore, one of ordinary skill in the art, based on the specification and drawings, would not be able to construct a quadrilateral linkage as Claimed in Claim 1.

2. Claims 2-3 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the Specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The elastic means has been described in terms of where it is connected in relation to other structural members, however, it is unclear to the examiner what is encompassed by elastic means and how the elastic means specifically operates in the invention. For the purposes of compact prosecution, the elastic means will be interpreted as anything that returns to its initial state after being deformed.

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "and similar products" in the preamble. It is unclear to the examiner which products are encompassed by similar products.

Claim 2 recites "the two links of the second linkage." However, Claim 1 does not establish the second linkage having two links.

Claim 2 recites "the fixed structure." This is being interpreted as "the fixed frame."

Claim 3 recites "said elastic means" where Claim 2 has defined a first and second elastic means. It is unclear to the Examiner whether Claim 3 is referring to the first elastic means, second elastic means, or both.

Claim 5 recites "the fixed structure" and "the fixed frame." Claim 1 does not introduce a fixed structure. This limitation lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Zorzetto (European Patent Application EP 0 868 870 A2).

Regarding Claim 1 as best understood, Zorzetto discloses a fixed frame (1, 2, 3) a first (22, both sides) and second (42, both sides) moveable frame; a headboard (4, 27); and a first (13, 14, 20, 19, 18, 26, 23), second (9, 25), and third (37) articulated quadrilateral linkage respectively engaged between the fixed frame and the first frame, the first and second frame, and the second frame and the headboard; and synchronization tools, at least one link (9) having an end (where 13 meets 9) hinged to a joint (where 13 meets 9) between the first frame, the headrest, and the second frame and an opposite end (where 9 meets 6) operatively connected to the fixed frame.

Regarding Claim 2 as best understood, Zorzetto discloses a first elastic means (24) interposed between two links (9,25) of the second linkage, while between a link of the first linkage and the fixed structure there is a second elastic means (16).

Regarding Claim 3 as best understood, Zorzetto's elastic means are capable of being positioned on any of Zorzetto's links.

Regarding Claim 4 as best understood, the second linkage of Zorzetto is considered to both determine the position of the headboard in the bed configuration (because they are linked) and the headboard (4, 27) is vertical in the sofa configuration. See Figure 2 of Zorzetto.

Regarding Claim 5 as best understood, Zorzetto discloses in Column 2, Lines 15-23 the symmetry of his structure and that the figures only show one side. Therefore, the linkages are hinged to the fixed structure 1 via intervening linkages and hinged to the fixed frame 2. It is not explicitly shown by Zorzetto that the linkages are joined for synchronous motion; however, it is inherent that for both symmetrical sides to operate properly in Zorzetto's bed, there will be cross members to join both sides.

Regarding Claim 6 as best understood, Zorzetto's first linkage synchronously moves the rest of the mechanism.

Regarding Claim 7 as best understood, Zorzetto's first linkage comprises a 5-hole link (19, 18, 26, 23) hinged to links having roto-translative motion.

Regarding Claim 8 as best understood, the first linkage of Zorzetto comprises a 4-hole link (15, 26, 18, 16) directly hinged (where 15 meets 13) to the fixed frame with rotary motion around a point (where 15 meets 13) with respect to the fixed frame.

Regarding Claim 9 as best understood, Zorzetto's mechanism performs a particular path (during folding), which raises the mechanism (See Figure 3) to a height above the ground that makes it manageable.

Regarding Claim 10 as best understood, Zorzetto's third linkage moves the sliding system of seat cushions 32 and 39. The sliding system is considered the system that allows 32 to be rotated away from 32 to be prepared for seating position.

Regarding Claim 11 as best understood, Zorzetto's third linkage moves the seat cushions 32 and 39 by means of only two additional elements (hinges where 26 meets 23, one on each side).

Regarding Claim 12 as best understood, Zorzetto discloses an additional link (15, 26, 18, 16) has at least three holes, at least one of them (where 26 meets 23) hinges a frame (22) upon which cushions are placed.

### ***Response to Arguments***

Applicant's arguments filed 8/7/2007 have been fully considered but they are not persuasive. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

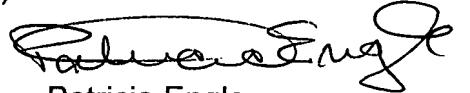
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 5,815,857 to De Lorenzo discloses a sofa bed open and close mechanism.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bill Kelleher whose telephone number is (571)-272-7753. The examiner can normally be reached on Monday - Friday 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571)-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patricia Engle  
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BK

